

Summary of Significant Changes Made Between the October 2018 Draft Toxicity Provisions and the July 2020 Draft Toxicity Provisions

Application of the Toxicity Provisions

- Clarify the interaction of the Provisions with Basin Plans and the State Implementation Policy.
 - For non-storm water NPDES dischargers only, when the permitting authority includes the Toxicity Provisions numeric effluent limitations, it cannot include any other numeric effluent limitations (except for more protective total maximum daily load (TMDL)-based requirements).
 - Allow the permitting authority to rely solely on the numeric aquatic toxicity water quality objectives to address non-chemical specific aquatic toxicity except when it would not fully protect all aquatic species in the relevant water body.

Most Sensitive Species

- Provide Regional Water Boards the discretion to determine when a species sensitivity screening for acute toxicity is required.
- Allow data from species sensitivity screenings generated within 10 years prior to the effective date of the Provisions to be used to determine the most sensitive species, and provide discretion to Regional Water Boards in determining if these data are sufficient.
- Extend the amount of time, from 10 years to 15 years, that Regional Water Boards may allow before requiring a new species sensitivity screening for chronic toxicity.
- Allow seasonal and intermittent dischargers to use fewer than four sets of tests for the species sensitivity screening.
- Provide Regional Water Boards the discretion to not require dischargers that do not discharge at least 15 days in any quarter of the year to conduct a species sensitivity screening.
- Remove the exception for conducting a species sensitivity screening for chronic toxicity for dischargers who participate in a regional monitoring program. This exception is no longer needed due to other changes made to the species sensitivity screening requirements.
- Allow Regional Water Boards to specify in permits that the Executive Officer or Executive Director can authorize the temporary use of an alternative most sensitive species under certain conditions.

Reasonable Potential

- Provide Regional Water Boards the discretion to determine when a reasonable potential analysis for acute toxicity is required.

- The requirement to include effluent limitations without first demonstrating reasonable potential was adjusted so that the requirement applies to all publicly-owned treatment work (POTW) dischargers that are authorized to discharge at a rate equal to or greater than 5 million gallons per day (MGD) *and that are required to have a pretreatment program.*
- Require the reanalysis of toxicity test data or additional toxicity testing to determine reasonable potential when the discharger has not conducted four toxicity testing at the instream waste concentration (IWC).

Monitoring Requirements

- Require non-storm water NPDES dischargers that do not have effluent limitations to conduct at least two routine chronic aquatic toxicity tests per year consistent with current Regional Board practices.
- Reduce the minimum routine monitoring frequency for chronic toxicity from quarterly to twice per year for POTW dischargers that are authorized to discharge less than 1 MGD.
- Provide Regional Water Boards the discretion to reduce chronic toxicity routine monitoring frequency for dischargers whose previous permit did not include a chronic toxicity effluent limitation when certain conditions are met.
- Provide the Regional Water Boards the discretion to reduce routine monitoring frequency during a toxicity reduction evaluation (TRE) if toxicity testing is conducted as part of the TRE.
- Require the Regional Water Boards to consider relevant scheduling constraints identified by the discharger and laboratories when setting the start of the “calendar month.”
- Allow dischargers additional time to initiate median monthly effluent limitation (MMEL) compliance tests if the test does not meet test acceptability criteria or if the test was not completed due to circumstances outside of the discharger’s control.
- Specify that replacement tests for all required toxicity tests that are not completed must be initiated as soon as possible.

Effluent Targets to Determine When to Conduct a TRE

- Require Regional Water Boards to include daily and monthly chronic toxicity effluent targets in permits for dischargers without chronic toxicity effluent limitations. Targets would not be subject to effluent limitation violations but may lead to a TRE.

Use of the Chronic *Ceriodaphnia dubia* (*C. dubia*) Reproduction Toxicity Test

- Add language to the adopting resolution directing staff to coordinate a study to identify ways to reduce within-lab variability and improve consistency between laboratories for the *C. dubia* reproduction toxicity test method and report back to the State Water Board with recommendations for refinements of the method as

appropriate. The study is anticipated to be completed by December 31, 2023.

- When permits that are reissued, renewed, or reopened after the effective date of the Provisions but before December 31, 2023, the Provisions provide the following options for Regional Water Boards:
 - For dischargers with no numeric chronic aquatic toxicity effluent limitations in their current permit and when *C. dubia* is identified as the most sensitive species, the permit shall include a maximum daily effluent limitations (MDEL) and a median monthly effluent target (MMET). Exceedances of the MMET would not result in an effluent limitation violation, but could result in the requirement to conduct a TRE.
 - For dischargers with no numeric chronic aquatic toxicity effluent limitations in their current permit and when another test species (not *C. dubia*) is identified as the most sensitive species, the permit shall include a MDEL and a median monthly effluent limitation (MMEL) using the most sensitive species.
 - For dischargers with numeric effluent limitations in their current permit and when the most sensitive species is identified as *C. dubia*, the permit shall include either:
 - A MDEL and MMEL using *C. dubia* as the most sensitive species; or
 - A MDEL using *C. dubia* as the most sensitive species, a MMET using *C. dubia* as the most sensitive species, and a MMEL using the next applicable species as the most sensitive species.
 - For dischargers with numeric chronic aquatic toxicity effluent limitations in their current permit and when another test species (not *C. dubia*) is identified as the most sensitive species, the permit shall include a MDEL and a MMEL using the most sensitive species.

Toxicity Reduction Evaluations

- Specify when a TRE is required for dischargers that do not attain chronic toxicity targets.

Exemptions

- Remove the exemption for POTWs serving small disadvantaged communities.
- Add an exemption for drinking water system discharges.
- Add an exemption for biological pesticide and residual pesticide discharges.
- Add an exemption for natural gas facilities discharges.